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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69503; File No. SR-NYSEArca-2013-44)

May 2, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services to Amend Step Up Tier 2 to Reduce the Volume Threshold Requirements Needed To Be Eligible for The Tier

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 22, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to amend Step Up Tier 2 to reduce the volume threshold requirements needed to be eligible for the tier. The Exchange proposes to implement the changes on May 1, 2013. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to amend Step Up Tier 2 to reduce the volume threshold requirements needed to be eligible for the tier. The Exchange proposes to implement the changes on May 1, 2013.

Currently, in order to qualify for Step Up Tier 2, an ETP Holder on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no less than 0.12% of U.S. consolidated average daily volume ("US CADV") in Tape A, Tape B, and Tape C securities for that month over the ETP Holder's average daily providing volume in June 2011 (the "Baseline Month"), subject to a minimum increase of 12 million average daily providing shares. The Exchange proposes to reduce the eligibility requirement for Step Up Tier 2 to no less than 0.10% of US CADV for the month over the ETP Holder's average daily providing volume in the Baseline Month, subject to a minimum increase of 10 million average daily providing shares. The Exchange does not propose to amend the credits for Step Up Tier 2.

By way of example, if an ETP Holder executed an average daily providing volume of 5 million shares in the Baseline Month, then to qualify for Step Up Tier 2 in a month where US

CADV is 11 billion shares, that ETP Holder would need to increase its average daily providing volume by at least 11 million shares, or 0.10% of that month's US CADV, for a total average daily providing volume of at least 16 million shares.⁴

The Exchange notes that the proposed fee change will reverse the Step Up Tier 2 fee changes that became operative on April 1, 2013.⁵ The Exchange is proposing the Step Up Tier 2 fee change because the previous fee change did not result in the anticipated increase in orders sent to the Exchange. As previously explained,⁶ the goal of the Step Up Tiers is to incent ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. In the Step Up Tiers Release, the Exchange explained that the Step Up Tiers were expected to benefit ETP Holders whose increased order flow provided added levels of liquidity (thereby contributing to the depth and market quality on the Exchange) but who are still not eligible for Tier 1, 2 or 3, or Investor Tier 1 or 2.⁷ For similar reasons, the Exchange believes that lowering the volume requirements needed to be eligible for Step Up Tier 2 will allow a greater number of ETP Holders to qualify for the tier, which will in turn incent ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that this especially is the case given that

⁴ In addition, those ETP Holders that did not directly provide volume to NYSE Arca in the Baseline Month will be treated as having an average daily providing volume of zero for the Baseline Month. With respect to the increased percentage of US CADV, the volume requirements to reach Step Up Tier 2's pricing levels will adjust each calendar month based on the US CADV for that given month.

⁵ See Securities Exchange Act Release No. 69305 (April 4, 2013), 78 FR 21443 (April 10, 2013) (SR-NYSEArca-2013-32).

⁶ See Securities Exchange Act Release No. 64820 (July 6, 2011), 76 FR 40974 (July 12, 2011) (SR-NYSEArca-2011-41) ("Step Up Tiers Release").

⁷ Id. at 76 FR 40975.

the \$0.0029 credit for providing liquidity in Tape A and Tape C securities under Step Up Tier 2 is substantially higher than the credits for Tape A and Tape C securities under the Basic Rates (\$0.0021) and Tier 3 (\$0.0025).

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed amendment to Step Up Tier 2 that lowers the volume requirements needed to be eligible for the tier is reasonable because the proposed change is designed to further incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that this is especially the case given that the \$0.0029 credit for providing liquidity in Tape A and Tape C securities is substantially higher than the credits for Tape A and Tape C securities under the Basic Rates (\$0.0021) and Tier 3 (\$0.0025). In addition, the proposed change is reasonable because it is reverting to the volume thresholds that were

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

previously in place at the Exchange.¹⁰ The Exchange further believes that the proposed amendment is equitable and not unfairly discriminatory because it will allow a greater number of ETP Holders to qualify for the tier, which will in turn incent ETP Holders to increase order flow and provide added levels of liquidity (thereby contributing to the depth and market quality on the Exchange), even if they may not be eligible for Tier 1, 2 or 3, or Investor Tier 1 or 2. Moreover, Step Up Tier 2 is available for all ETP Holders to satisfy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed amendment to Step Up Tier 2 that lowers the volume requirement needed to be eligible for the tier is designed to incent ETP Holders and Market Makers to increase the volume of orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

¹⁰ See supra n.5.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR- NYSEArca-2013-44 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2013-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer

to File Number SR-NYSEArca-2013-44 and should be submitted on or before [insert date 21 days

from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

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¹⁴ 17 CFR 200.30-3(a)(12).